

**To:** Patricia McGrath/R10/USEPA/US@EPA[]  
**Cc:** Christopher Hunter/DC/USEPA/US@EPA; Brian Frazer/DC/USEPA/US@EPA; Jeff Philip/R10/USEPA/US@EPA; Mary Thiesing/R10/USEPA/US@EPA[]; rian Frazer/DC/USEPA/US@EPA; Jeff Philip/R10/USEPA/US@EPA; Mary Thiesing/R10/USEPA/US@EPA[]; eff Philip/R10/USEPA/US@EPA; Mary Thiesing/R10/USEPA/US@EPA[]; ary Thiesing/R10/USEPA/US@EPA[]  
**From:** "Bluemink, Elizabeth"  
**Sent:** Tue 8/10/2010 3:00:35 AM  
**Subject:** RE: questions relating to Section 404(c) and the Pebble project in Alaska  
[ADN Yahoo SS.gif](#)  
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<http://www.EPA.gov/owow/wetlands/pdf/404c.pdf>  
<http://www.epa.gov/owow/wetlands/regs/>  
<http://www.epa.gov/owow/wetlands/>  
<http://www.EPA.gov/owow/wetlands/pdf/40cfrPart231.pdf>

Thanks:

Jeff Parker repping the tribes sent me a document from Bayou Aux Carps 404c decision records that indicates that there were no pending 404 applications when that decision was made. So, that must be the one.

Even if no one can tell me tonight about which project occurred in Alaska for which 404c was considered, I'd still like to know for future reference.

Thanks so much for trying to help in a pinch!

Elizabeth

Elizabeth Bluemink  
Business Reporter | Anchorage Daily News  
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From: [Mcgrath.Patricia@epamail.epa.gov](mailto:Mcgrath.Patricia@epamail.epa.gov) [<mailto:Mcgrath.Patricia@epamail.epa.gov>]  
Sent: Monday, August 09, 2010 6:57 PM  
To: Bluemink, Elizabeth  
Cc: [Hunter.Christopher@epamail.epa.gov](mailto:Hunter.Christopher@epamail.epa.gov); Brian Frazer; [Philip.Jeff@epamail.epa.gov](mailto:Philip.Jeff@epamail.epa.gov); [Thiesing.Mary@epamail.epa.gov](mailto:Thiesing.Mary@epamail.epa.gov)

Subject: RE: questions relating to Section 404(c) and the Pebble project in Alaska

Elizabeth -

The person in the region that helped me put this info together is on vacation. Although I am trying to get ahold of her.

I am ccing Chris Hunter and Brian Frazer of our HQ wetlands office in hopes that they can answer your question.

Chris or Brian - can you answer Elizabeth's question regarding which of the website 404(c) actions happened in advance of the 404 permit.

thanks -

Patty

-----"Bluemink, Elizabeth" <EBluemink@adn.com> wrote: -----

To: Patricia McGrath/R10/USEPA/US@EPA

From: "Bluemink, Elizabeth" <EBluemink@adn.com>

Date: 08/09/2010 02:38PM

Subject: RE: questions relating to Section 404(c) and the Pebble project in Alaska

Hi: I'm working on the story today.

Do you know what project in Alaska for which EPA considered but rejected using 404c?

After talking to the Corps of Engineers, I'm wondering if Don Young got 404c and 404q mixed up. Because the Corps did receive 404q letters from EPA regarding the Conoco project.

Elizabeth Bluemink

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-----Original Message-----

From: McGrath.Patricia@epamail.epa.gov

[mailto:McGrath.Patricia@epamail.epa.gov]

Sent: Monday, August 09, 2010 9:08 AM

To: Bluemink, Elizabeth

Subject: RE: questions relating to Section 404(c) and the Pebble project in Alaska

Bear incidents make the news? Aren't there always bear incidents in Alaska? Anyway, let me know if you do write the story. I will be heading up to Dillingham tomorrow. On wed. and thurs. EPA is doing mining information sessions in Dillingham and Newhalen.

- Patty

From: "Bluemink, Elizabeth" <EBluemink@adn.com>

To: Patricia McGrath/R10/USEPA/US@EPA

Date: 08/07/2010 04:04 PM

Subject: RE: questions relating to Section 404(c) and the Pebble project in Alaska

Hi Patty:

There have been some bear incidents/shootings today so I may not get the story done this weekend after all. Thank you for sending the information, though. It's possible that I might still end up writing the story tonight. It depends how the rest of the day goes.

Thanks again,  
Elizabeth

Elizabeth Bluemink

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(Embedded image moved to file: pic18467.gif)

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From: McGrath.Patricia@epamail.epa.gov [

mailto:McGrath.Patricia@epamail.epa.gov]

Sent: Friday, August 06, 2010 9:15 PM

To: Bluemink, Elizabeth

Cc: Macintyre.Mark@epamail.epa.gov; Brown.Anthony@epamail.epa.gov;

McLerran.Dennis@epamail.epa.gov; Jones.Enesta@epamail.epa.gov;

Pirzadeh.Michelle@epamail.epa.gov; Linda Anderson-Carnahan;

Parkin.Richard@epamail.epa.gov; Philip.Jeff@epamail.epa.gov

Subject: Re: questions relating to Section 404(c) and the Pebble project in Alaska

Elizabeth-

Below is a response to your questions. The Region coordinated with Headquarters in order to provide you with the most up-to-date information. Feel free to give me a call if you have further questions. Tomorrow you can call me on my cell at Ex. 6 - Personal Privacy  
- Patty

\* Has this section of the Clean Water Act been used in Region 10 before? In Alaska? If so, for what projects?

Not in any state in Region 10.

Please see:

<http://www.EPA.gov/owow/wetlands/pdf/404c.pdf>

<http://www.epa.gov/owow/wetlands/regs/>

<http://www.epa.gov/owow/wetlands/>

\* What is the EPA administrator's role, if any? Does the administrator (Lisa Jackson) have to approve a notice of proposed determination? Has Lisa Jackson given instructions to Region 10 on how to proceed with the letter from the tribal groups?

Please see the above EPA websites. The Administrator recently spoke personally with Alaska Native Villagers at a meeting in Dillingham, and committed to look at this issue very carefully. The EPA Region 10 Office is currently gathering information to evaluate the issues involved.

\* Are there any drawbacks for invoking 404c? If so, what are they? Has there ever been any prior discussion at EPA for using this provision in relation to Pebble or any other mining project?

Section 404(c) of the Clean Water Act authorizes EPA to restrict, prohibit, deny or withdraw the use of an area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas,

wildlife, or recreational areas. Section 404(c) is a final action. EPA does have the authority to engage in a section 404(c) in situations where no permit application exists. This is called an advance 404(c), and the authority is intended to be used where the aquatic resources are of great significance, and where they are sensitive or could be. Usually when there is a proposed permit involved with the section 404(c) determination, the Agency tries to exhaust all possible avenues for protection, and investigates whether measures can be built into a permit to achieve adequate protection of the resource. The 404(c) action can be restrictive or represent a prohibition on fill activity. In the former case, a specific set of ground rules are set for any activity which is proposed to take place in the area in question.

\* Has anyone in Alaska ever petitioned EPA to invoke 404c for a disposal site or is this the first time you are aware of it happening? EPA considered a section 404(c) action in Alaska in 1991, but was able to work out protective conditions for the action in question, so no section 404(c) determination was ever used.

\* On a related note, did EPA weigh in using 404c with the Conoco Phillips CD-5 Alpine Satellite project? Some nonprofits said today that didn't happen though it was mentioned by Congressman Don Young in a press release.

No. EPA commented on the Corps of Engineers' (Corp) section 404 permit for CD-5. The Corps denied the permit on the basis that there was a less environmentally damaging practicable alternative (LEDPA) to the Conoco-Phillips proposal. Conoco Phillips can revise their project and reapply to the Corps for a permit for the revised project.

\* What is involved in an adverse effects analysis - what sort of considerations are weighed - before a notice of proposed determination is filed?

Please see the above websites

Specifically, page 2 from  
<http://www.EPA.gov/owow/wetlands/pdf/40cfrPart231.pdf>

\* If someone petitions EPA to invoke 404c, does EPA have to respond to that request in a certain amount of time? If so, how long?

EPA is not required to take a section 404(c) action, and there is no statutory requirement regarding the timing of EPA's response to a

particular request. Both the Administrator and the Regional Administrator are committed to responding to requests from our Tribal partners and others in as timely a fashion as possible. However, given the seriousness of the action, EPA wants to ensure that any steps taken are taken based on a consideration of the best information and science available.

\* How often - if ever - has EPA used 404c before the permitting process actually began on a 404 permit?

Only one of the section 404(c) actions cited on the website occurred in advance of a permit or review process.

-----"Bluemink, Elizabeth" <EBluemink@adn.com> wrote: -----

To: Patricia McGrath/R10/USEPA/US@EPA, Mark Macintyre/R10/USEPA/US@EPA, Anthony Brown/R10/USEPA/US@EPA, Dennis McLerran/R10/USEPA/US@EPA  
From: "Bluemink, Elizabeth" <EBluemink@adn.com>  
Date: 08/05/2010 05:35PM  
Cc: Enesta Jones/DC/USEPA/US@EPA  
Subject: questions relating to Section 404(c) and the Pebble project in Alaska

Hi Patti, Dennis and others:

I am working on a story for Sunday's paper about the request from Bristol Bay region groups for EPA to invoke 404c on the Nushagak and Mulchatna drainages.

Unfortunately I hurried home sick today but am still needing to finish reporting before the week is over. I am not working on Friday so I have to finish the story on Saturday. Here are some questions that I hope someone from EPA can assist me with while I am out of the office. Since I'm not working, an e-mail response is preferable but I'm putting my cell phone # in this message. I'll cc my questions to the public affairs office in case Patti is not working tomorrow or if the questions need to go to someone else at EPA. I'm including the DC press office because ONE or TWO of my questions relates to EPA HQ/Lisa Jackson.

\* Has this section of the Clean Water Act been used in Region 10 before? In Alaska? If so, for what projects?

\* What is the EPA administrator's role, if any? Does the administrator (Lisa Jackson) have to approve a notice of proposed determination? Has Lisa Jackson given instructions to Region 10 on how to proceed with the letter from the tribal groups?

- \* Are there any drawbacks for invoking 404c? If so, what are they? Has there ever been any prior discussion at EPA for using this provision in relation to Pebble or any other mining project?
- \* Has anyone in Alaska ever petitioned EPA to invoke 404c for a disposal site or is this the first time you are aware of it happening?
- \* On a related note, did EPA weigh in using 404c with the Conoco Phillips CD-5 Alpine Satellite project? Some nonprofits said today that didn't happen though it was mentioned by Congressman Don Young in a press release.
- \* What is involved in an adverse effects analysis - what sort of considerations are weighed - before a noticed of proposed determination is filed?
- \* If someone petitions EPA to invoke 404c, does EPA have to respond to that request in a certain amount of time? If so, how long?
- \* How often - if ever - has EPA used 404c before the permitting process actually began on a 404 permit?

Thanks very much! If you need to reach me Friday, my cell is

Ex. 6 - Personal Privacy

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